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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/805,770	03/22/2004	Michael Durr	282743US8X	1234		
22850	7590	01/23/2009				
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.		EXAMINER				
1940 DUKE STREET		GARDNER, SHANNON M				
ALEXANDRIA, VA 22314		ART UNIT	PAPER NUMBER			
		1795				
NOTIFICATION DATE		DELIVERY MODE				
01/23/2009		ELECTRONIC				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/805,770	Applicant(s) DURR ET AL.
	Examiner Shannon Gardner	Art Unit 1795

–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED 06 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires 3 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.

12. Note the attached *Information Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____

13. Other: _____

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1795

/S. G./
Examiner, Art Unit 1795

continuation of 3. NOTE: the new limitation of one layer of the at least two havings having additionally a second kind of particles having a larger average diameter or length than the first kind of particles (emphasis added) raises a 112 2nd issue as the claim is now indefinite. It is unclear as to which "first kind of particles" the Applicant is referring as each layer may have a first kind of particles differing from the first kind of particles in another layer.

continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that "In Usami, none of the layers individually have two different sized particles" (see pp 9 of Arguments).

The Examiner respectfully disagrees. The device taught by Usami has a plurality of TiO₂ particles in a plurality of layers (Figure 4). A skilled artisan reading the Usami reference as a whole would understand that the TiO₂ particles in the respective layers are not of a perfectly uniform diameter and therefore the layers will contain particles of a smaller and larger diameter.

Applicant argues that "Chone does not discuss a porous film having two layers and in each layer a first kind of particle of one average diameter or length and one layer of the at least two layer includes a second kind particle having a larger average diameter or length" (pp 9 of Arguments).

The Examiner notes that Chone is relied upon as a general teching regarding average particle diameters in a porous photoelectrochemical film with metal oxide particles as well as the well known methods of applying layers by drop casting and doctor blading.